IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

WP(C).No. 31686 of 2006(V)

CMA.79/2006 of II ADDL.DISTRICT COURT,ERNAKULAM

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PETITIONER:

AMBADI AMMAU AMMA EDUCATIONAL
AND CHARITABLE TRUST, REGISTERED UNDER THE
INDIAN TRUST ACT HAVING ITS OFFICE AT
PARAM DHAMA, SREE POORNATHREYESA TEMPLE ROAD, NEAR
GANDHI SQUARE, POONITHURA-682 317, REP. BY ITS
MANAGING TRUSTEE, SHANTHA BALAKRISHNAN.

BY ADV. SRI.P.RADHAKRISHNAN (1)
SRI.MADHU RADHAKRISHNAN
SRI.K.R.KRISHNA KUMAR

RESPONDENTS:

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1. ARCHANA ENTERPRISES, HAVING ITS
OFFICE AT G 412, ARCHANA, PANAMPILLY NAGAR,
COCHIN-36, REPRESENTED BY CHIEF EXECUTIVE
GRANDEUR HOMES, SANIL KUMAR, KANISSERY.

2. CORPORATION OF COCHIN,
REPRESENTED BY ITS SECRETARY, OFFICE OF THE
COCHIN CORPORATION, PARK AVENUE, KOCHI.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.31686 OF 2006

DATED THIS THE 29th DAY OF NOVEMBER, 2006

JUDGMENT

Petitioner is the plaintiff and respondents are the defendants. This petition is filed under article 227 of Constitution of India challenging Ext.P9 order passed by Addl. District Judge, Ernakulam in C.M.A. 79/06 confirming the order of learned Munsiff in I.A.6916/06. As per Ext.P9 order, learned District Judge confirmed the finding of learned Munsiff that petitioner has not established either a prima-facie case or balance of convenience and therefore petitioner is not entitled to the order of temporary injunction sought for.

2. The argument of learned Counsel appearing for petitioner was that Ext.P5, the report of the Engineer with Ext.P6 agreement entered into by the parties in their attempt to settle the dispute, establish that if respondents are to be permitted

to carry on with the construction, it would cause irreparable injury and even loss of death of the students, who are studying in the school building. As per Ext.P5 report, the expert Engineer reported that damages had occurred to the school building due to the vibrational forces caused by the piling at the adjacent site as the rear side of the building was found more affected and the piling already done was found close to that portion. The remedial measures provided in Appendix C of Ext.P5, which reads as follows:

> "The damages explained are serious to the extent that the building will become unsafe when further piling progresses and as a precautionary measure the trenches provided for half the length of the boundary should be extended to the full length along the side of the school boundary immediately before work begins and also for the other three boundaries if needed adopting the same depth and

width using the same materials."

Accepting this conclusion, Ext.P6 agreement was arrived at between the parties, though finally parties could not proceed with the settlement, which according to petitioner is because of the bounsing of the cheque issued to petitioner but according to respondent it was due to the attitude of the petitioner who even refused to receive the bank draft when produced before the appellate Court. Whatever it be Ext.P6 agreement reveals that after the submission of Ext.P5 report, both the parties have studied the report, accepted the same in full and agreed to comply with all the recommendations and various terms and conditions provided in the report and Ext.P5 report forms part of the settlement. It is also provided therein that in addition to the remedial measures done at the site on 18.9.2006 respondents shall carry out/implement the additional measures recommended by the consultant Engineer in Appendix C of Ext.P5.

3. On hearing learned Counsel appearing for

petitioner and respondents, I do not find it necessary to interfere with Ext.P9 order in exercise of the extraordinary jurisdiction of this Court except specifically providing that respondents are entitled to carry on with the construction only on complying the remedial measures as provided under Appendix C of Ext.P5 report.

Petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,JUDGE

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